

Employment and Training Administration, Labor

§ 655.8

- (i) Substantial continuity of the same business operations;
- (ii) Use of the same facilities;
- (iii) Continuity of the work force;
- (iv) Similarity of jobs and working conditions;
- (v) Similarity of supervisory personnel;
- (vi) Whether the former management or owner retains a direct or indirect interest in the new enterprise;
- (vii) Similarity in machinery, equipment, and production methods;
- (viii) Similarity of products and services; and
- (ix) The ability of the predecessor to provide relief.

(2) For purposes of debarment only, the primary consideration will be the personal involvement of the firm's ownership, management, supervisors, and others associated with the firm in the violation(s) at issue.

United States (U.S.) means the continental U.S., Alaska, Hawaii, the Commonwealth of Puerto Rico, and the territories of Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands (CNMI).

United States Citizenship and Immigration Services (USCIS) means the Federal agency within DHS that makes the determination under the INA whether to grant petitions filed by employers seeking H-2B workers to perform temporary non-agricultural work in the U.S.

United States worker (U.S. worker) means a worker who is:

- (1) A citizen or national of the U.S.;
- (2) An alien who is lawfully admitted for permanent residence in the U.S., is admitted as a refugee under 8 U.S.C. 1157, is granted asylum under 8 U.S.C. 1158, or is an immigrant otherwise authorized (by the INA or by DHS) to be employed in the U.S.; or
- (3) An individual who is not an unauthorized alien (as defined in 8 U.S.C. 1324a(h)(3)) with respect to the employment in which the worker is engaging.

Wage and Hour Division (WHD) means the agency within the Department with investigatory and law enforcement authority, as delegated from DHS, to carry out the provisions under 8 U.S.C. 1184(c).

Wages mean all forms of cash remuneration to a worker by an employer in payment for personal services.

[77 FR 10148, Feb. 21, 2012]

§ 655.6 Temporary need.

(a) An employer seeking certification under this subpart must establish that its need for non-agricultural services or labor is temporary, regardless of whether the underlying job is permanent or temporary. 8 CFR 214.2(h)(6)(ii)(A).

(b) The employer's need is considered temporary if justified to the CO as one of the following: A one-time occurrence; a seasonal need; a peakload need; or an intermittent need, as defined by DHS. 8 CFR 214.2(h)(6)(ii)(B). Except where the employer's need is based on a one-time occurrence, the CO will deny a request for an *H-2B Registration* or an *Application for Temporary Employment Certification* where the employer has a need lasting more than 9 months.

(c) A job contractor will only be permitted to seek certification if it can demonstrate through documentation its own temporary need, not that of its employer-client(s). A job contractor will only be permitted to file applications based on a seasonal need or a one-time occurrence.

[77 FR 10148, Feb. 21, 2012]

§ 655.7 Persons and entities authorized to file.

(a) *Persons authorized to file.* In addition to the employer applicant, a request for an *H-2B Registration* or an *Application for Temporary Employment Certification* may be filed by an attorney or agent, as defined in § 655.5.

(b) *Employer's signature required.* Regardless of whether the employer is represented by an attorney or agent, the employer is required to sign the *H-2B Registration* and *Application for Temporary Employment Certification* and all documentation submitted to the Department.

[77 FR 10151, Feb. 21, 2012]

§ 655.8 Requirements for agents.

An agent filing an *Application for Temporary Employment Certification* on behalf of an employer must provide: